

The Hon. Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
EPHRAIM ROSENBERG, *et al.*  
  
Defendants.

NO. CR20-151-RAJ

**UNITED STATES' REPLY TO  
DEFENDANT'S RESPONSE TO  
GOVERNMENT'S MOTION FOR  
ENTRY OF A PROTECTIVE ORDER  
RESTRAINING CERTAIN  
FORFEITABLE PROPERTY**

Entry of a protective order *restraining* the \$100,000 in United States currency seized from Defendant Hadis Nuhanovic's residence is warranted on the record presented and consistent with this District's standard forfeiture practice. The Defendant will have ample opportunity to challenge the actual *forfeiture* of the currency later in these criminal proceedings—i.e., in the context of plea negotiations and/or at trial.

Defendant Nuhanovic's argument that there is insufficient evidence to establish probable cause that the currency may be forfeitable in this case is entirely inaccurate. As the Court is well aware, "[p]robable cause...is not a high bar: It requires only the kind of fair probability on which reasonable and prudent people, not legal technicians, act." *Kaley v. United States*, 571 U.S. 320 (2014). Here, the United States has easily made that showing. As reflected in its motion, the United States asserts the currency is forfeitable as

1 “facilitating” property for the conspiracy charged in Count 1. In other words, the  
 2 currency was “intended to be used to ... facilitate the [Defendant’s] commission” of the  
 3 conspiracy to access Amazon’s computer systems without authorization, including for the  
 4 purpose of selling restricted dietary supplements using confidential information and  
 5 documents that Defendant Nuhanovic and his co-conspirators misappropriated from  
 6 Amazon’s computer systems and fraudulently altered for their benefit. 18 U.S.C.  
 7 § 1030(i)(1)(A). The facts set forth in Special Agent Donald Santiso’s supporting  
 8 declaration, *including the Defendant’s own admission that he intended to use the*  
 9 *currency to purchase restricted supplements so he could resell them on the Amazon*  
 10 *Marketplace*, are more than sufficient to state a “fair probability” the currency would be  
 11 forfeitable as “facilitating” property for the criminal conspiracy if the Defendant is  
 12 ultimately convicted of or pleads guilty to Count 1.

13 Defendant Nuhanovic ignores the legal basis for forfeiture articulated by the  
 14 United States and the facts asserted by the United States to support that basis. Instead, he  
 15 mistakenly argues that the currency must be “proceeds” of a crime or constitute an illegal  
 16 loan to be forfeitable. Not so. The United States is pursuing forfeiture of the currency as  
 17 “facilitating” property, and the Defendant’s refusal or failure to respond to *that* basis  
 18 further supports a finding of probable cause and an order authorizing the United States’  
 19 continued retention of the currency pending the outcome of this criminal case.

20 Although the Defendant does not object to the government’s continued restraint of  
 21 the currency, he suggests a protective order is not necessary to effect that restraint. At this  
 22 juncture, however, because the Defendant has filed an administrative claim to the  
 23 currency, it is standard practice in this District for the United States to seek a protective  
 24 order reflecting a judicial finding of probable cause for its continued restraint. This  
 25 ensures the government satisfies its obligations pursuant to 18 U.S.C. § 983(a)(3)(B)(ii)  
 26 (providing that, after an administrative claim has been filed, where the government is  
 27 pursuing the *criminal* forfeiture of the relevant property, the government give notice it  
 28 will be pursuing forfeiture of the property in the criminal case and “take the steps

1 necessary to preserve its right to maintain custody of the property”). It is this initial  
 2 probable cause finding the United States seeks here, and that finding is well supported on  
 3 the record presented.

4 For these reasons, the United States respectfully requests that the Court enter the  
 5 proposed protective order restraining the currency for the duration of this criminal case.  
 6 Consistent with governing law and procedure, the actual forfeiture of the currency will  
 7 depend on the Defendant’s conviction on the relevant criminal conspiracy count and  
 8 would not be final until his sentencing. *See United States v. Lazarenko*, 476 F.3d 642,  
 9 647 (9th Cir. 2007) (“Courts impose criminal forfeiture as punishment following  
 10 conviction of a substantive criminal offense.”); Fed. R. Crim. P. 32.2(a)(4)(A) (criminal  
 11 forfeitures are final as to a defendant at sentencing).

12 DATED this 29th day of January, 2021.

13 Respectfully submitted,

14 BRIAN T. MORAN  
 15 United States Attorney

16  
 17 /s/ Jehiel I. Baer  
 18 JEHIEL I. BAER  
 19 Assistant United States Attorney  
 20 700 Stewart Street, Suite 5220  
 21 Seattle, WA 98101-1271  
 22 (206) 553-2242  
 23 [Jehiel.Baer@usdoj.gov](mailto:Jehiel.Baer@usdoj.gov)  
 24  
 25  
 26  
 27  
 28

**CERTIFICATE OF SERVICE**

I hereby certify that on January 29, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which automatically serves the parties of record.

/s/ Chantelle Smith

CHANTELLE SMITH

FSA Supervisory Paralegal, Contractor

United States Attorney's Office

700 Stewart Street, Suite 5220

Seattle, WA 98101

(206) 553-2242

[Chantelle.Smith2@usdoj.gov](mailto:Chantelle.Smith2@usdoj.gov)